

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 4290 of 2005

Date of decision: 28.9.2006

Parabhjit Singh

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. M.S.Khera, Sr. Advocate with
Mr. Abhinashi Singh, Advocate,
for the petitioner.

Mr. S.K.Sharma, Advocate,
for the respondents.

JUDGMENT

M.M. Kumar, J.

This petition filed under Article 226 of the Constitution
prays for quashing order dated 30.10.2003 (P-3) and order dated
16.12.2003 (P-2) passed by the Revisional Authority-Inspector

General/SWS, Central Industrial Security Force, partially accepting the prayer made by the petitioner, inasmuch as, the order dated 7.1.2000 passed by the Punishing Authority i.e. the Commandant, CISF (P-5) and the order of the Appellate Authority, dated 2.6.2000 (P-4) have been modified. Accordingly, the punishment of removal from service imposed on the petitioner has been reduced to that of reduction of pay by two steps i.e. from Rs. 3,795/0 to Rs. 3,625 in the time scale of Rs. 3200-85-4900 for a period of two years, reinstating the petitioner in service. While passing the order reducing the punishment in the aforementioned manner on 30.10.2003, the Revisional Authority also proposed to treat the entire period from the date of his removal from service to the date of his joining on reinstatement as 'dies-non'. In that regard the order dated 30.10.2003 (P-3) had granted an opportunity of hearing to the petitioner. After due process, the period has been treated as a dies-non. All these orders have been made subject matter of challenge in the instant petition.

Brief facts of the case are that the petitioner has been working as Constable/ Driver with the respondent Force. On the allegation that he entered into scuffle with another Head Constable/Driver, used filthy language and beat him by lathi, the petitioner was charge sheeted on 10.11.1999. Thereafter he was dealt with departmentally under Rule 34 of the Central Industrial Security Force Rules, 1969 (for brevity, 'the Old Rules'). The Enquiry Officer has held the articles of charge as partially proved. Thereafter copy of the enquiry report was furnished to the petitioner by the punishing

authority. His reply to the enquiry report was duly considered and the Punishing Authority-cum-Commandant agreed with the findings recorded by the Enquiry Officer. He was eventually awarded the punishment of removal from service vide order dated 7.1.2000. The petitioner submitted an appeal under Rule 54 of the Rules on 11.1.2000 before the Deputy Inspector General, CISF, which was dismissed vide order dated 2.6.2000. The petitioner approached this Court by filing CWP No. 8098 of 2001 and vide order dated 28.7.2003 a Division Bench of this Court relegated the petitioner to the remedy of revision. The Revisional Authority noticed that the Enquiry Officer had rightly come to the conclusion that the charges against the petitioner were duly proved by holding that the petitioner has beaten up Head Constable/Driver V.S.Rao and the punishment awarded to him was for the proved charges. However, the Revisional Authority by taking into consideration the length of service, reduced the punishment of removal from service to that of reduction of pay by two stages and issued him notice with regard to the proposal for considering the period from the date of removal to the date of reinstatement as dies-non. The afore-mentioned order reads as under:

“However, having regard to the facts and circumstances of the case and taking into consideration of his length and past service, I am of the considered view that the punishment awarded to him by the Disciplinary Authority and upheld by the Appellate Authority is on the higher side. Keeping in view his young age and the

service rendered by the petitioner in the Force, I am inclined to take a lenient view. I, therefore, in exercise of the powers vested in me vide Rule 54 of the CISF Rules, 2001, hereby reduce the penalty of 'removal from service' to that the 'Reduction of pay by two stages i.e. from 3795/- to Rs. 3625/- in the time scale of Rs.3200-85-4900/- for a period of two years. It is further directed that during the period of reduction, the petitioner will not earn any increments of pay and on completion of the said period, the reduction will have the effect of postponing his future increments of pay'.

Within the above modification in the punishment order, I hereby reinstate the petitioner in service and direct him to report for duty in CISF unit, RSTPP Ramagundam, Andhra Pradesh within 15 days of receipt of this order. If he fails to report for duty within the stipulated period, it will be presumed that he is no more interested to service and the order of reinstatement in service will be treated as withdrawn automatically.

As regards the intervening period from the date of his 'Removal from service' to the date of joining on reinstatement, it is proposed to treat the entire period as "Diesnon". The petitioner is given an opportunity to submit his representation on the aforesaid proposal within one month of joining the duty on reinstatement.

Final decision on regularization of intervening period will be taken after consideration of the representation, if any, submitted by the petitioner or after expiry of a period of one month as the case may be.”

The afore-mentioned proposal was finalised by order dated 16.12.2003 after taking into consideration the representation made by the petitioner. The operative part of the order dated 16.12.2003, reads as under:

“2. After joining on re-instatement in CIS Unit, RSTPP Ramagundam, on 14.11.2003 (FN) No. 902390539 HC/Driver Parabhjit Singh has submitted his representation dated 19.11.2003 against the aforesaid proposal. In his representation, the petitioner has, inter-alia, agitated that if an employee intentionally remains away from his duty he cannot claim the benefit of continuous service of that period. However, if he has been kept away from duty and ultimately reinstated he had to be given not only the benefit of continuity of service but back wages also. Further, he contended that the intervening period may be treated as spent on duty for all purposes to maintain continuity in service otherwise he would lose the benefit of entire service rendered by him.

3. On dispassionate consideration of the reasons advanced by the petitioner, I do not find them plausible enough, warranting review of the proposal

made in our order dated 30.10.2003.

4. I, therefore, order that the period of absence from duty i.e. from the date of removal from service to the date of rejoining on reinstatement in respect of No. 902390539 HC/Driver Parabhjit Singh be treated as 'dies-non' for all purposes and he shall not be paid any pay and allowances for the said period. However, it is clarified that this will not imply break in service in terms of Rules 25 of CCS (Pension) Rules, 1972.”

We have heard the learned counsel at a considerable length and find that the impugned orders do not suffer from any violation of rules or instructions. The regular departmental enquiry has been held against the petitioner in accordance with the rules, which were applicable at that time. It was found that the petitioner had beaten up Head Constable Driver Shri V.S.Rao. Accordingly he was ordered to be removed from service in exercise of powers under Rule 29(A) read in conjunction with Schedule II and Rule 31(b) of the Rules. The period of his suspension from 27.10.1999 to the date of receipt of the order, was treated as suspension for all intents and purposes and the petitioner was not to be paid any pay and allowances except the subsistence allowance already paid during the period of suspension. His appeal was duly considered by order dated 2.6.2000 and the same was dismissed. However, the Revision petition filed by the petitioner has been duly accepted. The Revisional Authority has acted strictly in accordance with the rules and has taken a lenient view by reinstating the petitioner in service and by reducing

the punishment of reduction of pay by two stages. The period from the date of removal till the date of joining on reinstatement has been treated as dies-non after issuance of due notice. It is well settled that this Court cannot sit as a court of appeal on the findings recorded by the enquiry officer as accepted by the appointing/punishing authority. The appellate authority as well as the revisional authority have exercised their power within the four corners of the rules which do not warrant any interference. It has not been shown that the principles of natural justice or Wendsbury's principles have been violated in any manner. The writ petition is wholly mis-conceived and the same is accordingly dismissed.

(M.M. KUMAR)
JUDGE

28.9.2006
Okg/Pkapoor

(M.M.S. BEDI)
JUDGE